

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 11,542

APPELLANT'S BRIEF AND JOINT APPENDIX

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

WILLIAM C. CLAY, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

Appeal from the United States District Court
for the District of Columbia

BYRON N. SCOTT
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Washington 5, D. C.

No. 11,542

STATEMENT OF QUESTION PRESENTED

Does the United States District Court for the District of Columbia have jurisdiction to enter an order voiding an assignment of a patent to the United States Government if it is alleged and proved that the assignment was procured by duress?

INDEX AND TABLE OF CASES

	PAGE
Jurisdictional Statement	1
Statement of the Case.....	2
Statement of Points.....	3
Summary of Argument.....	3
Argument	3
Conclusion	7

Citations

Texts

Pomeroy Equity Jurisprudence, Vol. 1, Sec. 170-171....	6
Restatement Contracts, Vol. 2, Sec. 503.....	5
Williston, Contracts, Vol. 5, Sec. 1578.....	5

Cases

Ackerlind v. United States, 240 U.S. 531.....	5
Alta Electric & Mechanical Co. v. United States, 90 Ct. Cl. 466.....	5, 6
District of Columbia v. Barnes, 197 U.S. 146.....	5
Hyde Park Clothes v. United States, 84 F. Supp. 589	5
Kemp v. United States, 38 F. Supp. 568.....	5
Moffett, Hodgkins & Clarke Co. v. Rochester, 178 U.S. 373	5, 6
Saligman v. United States, 56 F. Supp. 505.....	5
South Boston Iron Works v. United States, 34 Ct. Cl. 174	4
State of Connecticut v. F. H. McGraw & Co., 41 F. Supp. 369	5
United States v. Milliken Imprinting Co., 202 U.S. 168	5
Werner v. United States, 10 F.R.D. 245.....	5

Statutes

Tucker Act, March 3, 1887, 24 Stat. At. L. 505.....	3, 4, 5
28 U.S.C.A. 1346(a) (2).....	1, 4

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,542

WILLIAM C. CLAY, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

**Appeal from an Order of Dismissal by the
United States District Court
for the District of Columbia**

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal, docketed August 27, 1952, under the provisions of Title 28, Section 1291, United States Code, from an order entered May 12, 1952 dismissing appellant's complaint. Notice of appeal was filed June 11, 1952.

STATEMENT OF THE CASE

Appellant, William C. Clay, invented a de-icing attachment for airplane propellers and held legal title to United States patent No. 2,129,565. The United States Government in Civil Action No. 88,417 prayed that Clay be ordered to transfer the patent to the United States Government. After answer and while the suit was still pending, Clay on the 31st day of March, 1942, executed an assignment of the patent to the United States Government and by agreement between the parties the suit was dismissed.

By an amended complaint filed on February 4, 1952 in the United States District Court for the District of Columbia, appellant alleged that the aforesaid assignment of Letters Patent, No. 2,129,565 to the United States was procured by duress and asked for a judgment declaring the assignment null and void. (J.App. 5A.)

The Government moved to dismiss on the ground that the court was without jurisdiction and on the further ground that the complaint did not state a claim upon which relief may be granted. (J.App. 4A.)

At the conclusion of the argument on the motion, the court, after reserving to the appellant the right to amend if the court found that it did have jurisdiction, took the case under advisement.

A memorandum opinion filed on April 30, 1952, held that the court was without jurisdiction to grant specific relief against the United States; that the facts alleged in the complaint were not sufficient to state a cause of action for duress; and that the complaint did not sufficiently allege that the cause of action had arisen within the period of six years preceding the institution of the instant suit. (J.App. 7A.) An order was filed May 12, 1952 dismissing the action. (J.App. 9A.)

Appellant, plaintiff below, did not seek to amend the allegations as to duress and time but chose to appeal the decision of lack of jurisdiction and ask for a reversal on that point and a remand to the trial court with instructions to allow the plaintiff to amend the complaint on the latter two points.

STATEMENT OF POINTS

1. The Tucker Act, as amended and revised, conferred upon the United States District Courts equitable jurisdiction of cases arising out of government contracts with the power necessary to grant the equitable relief of rescission.

SUMMARY OF ARGUMENT

1. The court had equitable jurisdiction in the instant case to grant the relief prayed for in the complaint.
2. The district courts may order reformation of a government contract.
3. The district courts may declare a government contract void.
4. Reformation and rescission are specific equitable remedies.
5. The complaint did not invoke the power of the Court to compel the United States to take any affirmative action.

ARGUMENT

1. **The Trial Court Had Jurisdiction in the Instant Case to Grant the Equitable Relief Prayed for in the Complaint.**

The prayer was for a judgment declaring the assignment of a patent void on the ground that the assignment

was procured by duress. The Court held that it is "without jurisdiction to grant specific relief against the United States, its jurisdiction being limited to judgment for damages arising out of a contract, where such damages will not exceed the sum of \$10,000" and that "no grant of authority or consent to be sued empowers this court to compel action by the United States other than the payment of damages." It is respectfully urged that this is not the law.

The Tucker Act of 1887 provided, *inter alia*, that "the Court of Claims shall have jurisdiction to hear and determine the following matters: First, All claims founded upon * * * any contract, express or implied, with the Government of the United States * * * in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty, if the United States were suable."

The same Act, as amended, also provided, *inter alia*, that the district courts shall have concurrent original jurisdiction with the Court of Claims over such cases where the claim does not exceed \$10,000.

The foregoing provisions were embodied in 28 U.S.C.A. 1346(a)(2) by the 1948 revision of the Code wherein it is provided that: "The district courts shall have original jurisdiction, concurrent with the Court of Claims, of any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded * * * upon any express or implied contract with the United States." (Emphasis added.) A complaint for judgment of rescission is a "Civil Action" (Rule 2 of Federal Rules of Civil Procedure.)

2. Courts Have Ordered Reformation of Government Contracts.

In 1899 the Court of Claims held in *South Boston Iron Works v. United States*, 34 Ct. Cl. 174, that since the

passage of the Tucker Act, the court has equity power to reform a contract so as to effectuate the full intention of the parties. This decision was cited with approval by the Supreme Court of the United States in 1905 in the case of *District of Columbia v. Barnes*, 197 U.S. 146.

The doctrine has been adhered to consistently since that date. See *United States v. Milliken Imprinting Company*, (1906), 202 U.S. 168; *Ackerlind v. United States*, (1916), 240 U.S. 531; and *Werner v. United States*, (1950), 10 F.R.D. 245.

It is well established, therefore, that the district courts have equitable jurisdiction over cases arising out of contract with the Government and that they possess the power to grant the equitable relief of reformation in order to determine money damages.

3. The Courts May Declare a Government Contract Void.

The courts have uniformly held that under the Tucker Act they have the power to rescind or void a contract with the Government where, because of erroneous arithmetical processes or by omission of items, the bid price was based on a mistake. *Moffett, Hodgkins & Clarke Co. v. Rochester*, 178 U.S. 373; *Kemp v. United States*, 38 F. Supp. 568; *State of Connecticut v. F. H. McGraw & Co.*, 41 F. Supp. 369; *Saligman v. United States*, 56 F. Supp. 505; *Hyde Park Clothes v. United States*, 84 F. Supp. 589; *Alta Electric & Mechanical Co. v. United States*, 90 Ct. Cl. 466; 5 *Williston, Contracts*, Sec. 1578; 2 *Restatement, Contracts*, Sec. 503.

In the *Kemp Case*, *supra*, the plaintiff sued the Government for money allegedly due under a government contract and the Government counter-claimed. The counter-claim was based upon the following transaction: Plaintiff offered to sell the Government a machine for \$2,953.65. The offer was accepted and a contract signed. The two closest bids were for \$10,112 and \$12,133. The plaintiff

claimed mistake in his offer due to a typographical error on the part of his supplier. The plaintiff refused to perform and the Government bought a machine elsewhere. Thus the counter-claim in the case was for the difference between plaintiff's offer and the next lowest bid plus liquidated damages. The court found that the mistake was known to the government contracting officer.

The court stated that, "It is axiomatic that the Government must be held to the same general principles of equity and fair play in dealing with those who contract with it as are the contractors themselves." The court declared the subject contract for the machine void and denied the counter-claim citing for its authority the *Moffett Case* and the *Alta Electric Case, supra*.

4. Reformation and Rescission Are Specific Equitable Remedies.

Pomeroy in the 5th Edition of his *Equity Jurisprudence*, Vol 1, Sec. 170, states that, "The equitable remedies, with a few exceptions are specific." In Section 171, he classifies the remedies and in the second class, which he calls "those remedies which operate indirectly to establish or protect primary rights," he lists re-execution of instruments, reformation of instruments, surrender or discharge of instruments and cancellation or rescission.

It is respectfully urged, therefore, that the courts have consistently upheld their right to grant the specific relief of reformation or rescission against the United States and that the Trial Court did have jurisdiction to grant the specific relief of rescission or cancellation in the instant case.

5. **The Complaint Did Not Invoke the Power of the Court to Compel the United States to Take Any Affirmative Action.**

The amended complaint asked only for a judgment declaring the assignment null, void and of no effect. (J. App. 6-A.)

CONCLUSION

It is respectfully urged that the cited cases establish the jurisdiction of the United States District Court for the District of Columbia to declare the assignment null and void. The order dismissing the case should be reversed and the cause remanded to the trial court with instruction to allow the complaint to be amended in accordance with the right reserved.

Respectfully submitted,

BYRON N. SCOTT
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Attorney for Appellant

APPENDIX

INDEX

	PAGE
Complaint to Set Aside Patent Assignment.....	2 A
Motion to Dismiss.....	4 A
Amended Complaint to Set Aside Patent Assign- ment	5 A
Memorandum	7 A
Order	9 A
Notice of Appeal.....	10 A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,542

WILLIAM C. CLAY, *Appellant*,

v.

THE UNITED STATES OF AMERICA, ET AL., *Appellees*.

Appeal from the United States District Court
for the District of Columbia

JOINT APPENDIX

1 Filed Dec 17 1951 Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM C. CLAY, Gaithersburg, Maryland, Plaintiff

v.

THE UNITED STATES OF AMERICA DEPARTMENT OF DEFENSE, ROBERT A. LOVETT, SECRETARY, The Pentagon, Washington, D. C. DAN A. KIMBALL, SECRETARY, The Pentagon, Washington, D. C., Defendants

Civil Action No. 5208—'51

Complaint To Set Aside Patent Assignment

1. Jurisdiction of this Court in this cause is based upon Title 28, section 1346—(a)—(2) of the United States Code.

2. On July 2, 1928, the plaintiff was employed by the United States Government, National Advisory Committee for Aeronautics, at Langley Field, Hampton, Virginia, as a Junior Aeronautical Engineer. He worked in said capacity solely as a junior engineer, and at no time did his contract of employment contemplate any of his attention to or consideration of any invention.

3. On September 6, 1938, the plaintiff being still employed by the National Advisory Committee for Aeronautics, was granted Letters Patent No. 2,129,565, for a De-Icing Attachment for Airplane Propellers.

4. On or about November 15, 1939 the defendant, United States of America, without any basis in law or in fact, demanded that the plaintiff assign to the said defendant all his rights, title and interest in and to said

Letters Patent No. 2,129,565; which demand the plaintiff refused.

2 5. On or about September 19, 1940, the defendant, United States of America, instituted in the United States District Court for the District of Columbia, Civil Action No. 8417 against the plaintiff to establish title to said Letters Patent in the United States of America, and to require the plaintiff to transfer to itself the whole right, title and interest of the plaintiff in and to said Letters Patent. On November 8, 1940, the plaintiff answered denying any right asserted by defendant United States of America, to any title in said Letters Patent or to demand any transfer to itself of any right, title or interest in or to said Letters Patent.

6. The defendant, United States of America, thereupon admonished the plaintiff that, if said defendant should receive judgment in said Civil Action, the plaintiff would lose the subject Letters Patent, and that in the event the plaintiff should receive judgment in the said Civil Action, said defendant would then appeal the decision to the highest court necessary, thereby devolving a great and insufferable expense upon the plaintiff.

7. On March 31, 1942, the plaintiff, due to his inability to have financed said purportedly prohibitive costs, the physical illness of his then Counsel, fear motivated by the intervention of the Department of Justice, and as a result of coercion and economic duress, all of which resulted from actions of the defendant United States of America, assigned, transferred and conveyed to the said defendant all his right, title and interest in and to said Letters Patent, throughout the United States, its territories and possessions, but not elsewhere; all without any consideration for said assignment.

8. On April 15, 1942, the defendant dismissed said Civil Action No. 8417 against the plaintiff.

3 WHEREFORE the plaintiff prays: (1) for a Judgment declaring the aforesaid Assignment of Letters Patent No. 2,129,565 to the defendant, null, void and of no effect; (2) that the defendant, United States of America, be ordered and required to effect a reassignment and transfer of the title to said Letters Patent to the plaintiff; (3) and for such other and further relief as to the Court may appear just and proper.

/s/ William C. Clay

* * * *

4 Filed Jan 30 1952 Harry M. Hull, Clerk

Motion To Dismiss

Come now the defendants and by their attorney, the United States Attorney, move this Court to dismiss the above entitled complaint for the reason that the Court is without jurisdiction over the subject matter and for the further reason that the complaint fails to state a claim upon which relief may be granted.

/s/ Charles M. Irelan
Charles M. Irelan,
United States Attorney

/s/ Ross O'Donoghue
Ross O'Donoghue,
Assistant United States Attorney

* * * *

5 Filed Feb 4 1952 Harry M. Hull, Clerk

Amended Complaint To Set Aside Patent Assignment

1. Jurisdiction of this Court in this cause is based upon Title 28, section 1346—(a)—(2) of the United States Code.

2. On July 2, 1928, the plaintiff was employed by the United States Government, National Advisory Committee for Aeronautics, at Langley Field, Hampton, Virginia, as a Junior Aeronautical Engineer. He worked in said capacity solely as a junior engineer, and at no time did his contract of employment contemplate any of his attention to or consideration of any invention.

3. On September 6, 1938, the plaintiff being still employed by the National Advisory Committee for Aeronautics, was granted Letters Patent No. 2,129,565, for a De-Icing Attachment for Airplane Propellers.

4. On or about November 15, 1939 the defendant, United States of America, without any basis in law or in fact, demanded that the plaintiff assign to the said defendant all his rights, title and interest in and to said Letters Patent No. 2,129,565; which demand the plaintiff refused.

5. On or about September 19, 1940, the defendant, United States of America, instituted in the United States District Court for the District of Columbia, Civil Action No. 8417 against the plaintiff to establish title to said Letters Patent in the United States of America, and to require the plaintiff to transfer to itself the whole
6 right, title and interest of the plaintiff in and to said Letters Patent. On November 8, 1940, the plaintiff answered denying any right asserted by defendant United States of America, to any title in said Letters

Patent or to demand any transfer to itself of any right, title or interest in or to said Letters Patent.

6. The defendant, United States of America, thereupon admonished the plaintiff that, if said defendant should receive judgment in said Civil Action, the plaintiff would lose the subject Letters Patent, and that in the event the plaintiff should receive judgment in the said Civil Action, said defendant would then appeal the decision to the highest court necessary, thereby devolving a great and insufferable expense upon the plaintiff.

7. On March 31, 1942, the plaintiff, due to his inability to have financed said purportedly prohibitive costs, the physical illness of his then Counsel, fear motivated by the intervention of the Department of Justice, and as a result of coercion and economic duress, all of which resulted from actions of the defendant United States of America, assigned, transferred and conveyed to the said defendant all his right, title and interest in and to said Letters Patent, throughout the United States, its territories and possessions, but not elsewhere, all without any consideration for said assignment.

8. On April 15, 1942, the defendant dismissed said Civil Action No. 8417 against the plaintiff.

WHEREFORE the plaintiff prays: (1) for a Judgment declaring the aforesaid Assignment of Letters Patent No. 2,129,565 to the defendant, null, void and of no effect; (2) and for such other and further relief as to the Court may appear just and proper.

7 We hereby certify that copies of the foregoing Amended Complaint were mailed to Honorable Charles M. Ireland, attorney for the defendant, at his office address, the United States District Court House, Washington, D.

C., and to the Attorney General, the 4th day of February, 1952.

/s/ Byron N. Scott

Byron N. Scott

/s/ Marcus L. Beckner, Jr.

Marcus L. Beckner, Jr.

Attorneys for the Plaintiff

• • • •

8 Filed Apr 30 1952 Harry M. Hull, Clerk

Memorandum

Morris, J. In this action the plaintiff, in his original complaint, alleged that, while he was employed by the United States Government, he was granted Letters Patent No. 2,129,565, for a de-icing attachment for airplane propellers; that subsequently the United States of America demanded that the plaintiff assign said patent to the United States and subsequently, on September 19, 1940, the United States of America instituted a suit in this Court, Civil Action No. 8417, against the plaintiff to establish title to said letters patent in the United States, and requiring plaintiff to transfer to the United States all right, title and interest of the plaintiff in and to said letters patent, in which suit the plaintiff filed an answer denying the right of the United States to said relief. The complaint then alleges:

The defendant, United States of America, thereupon admonished the plaintiff that, if said defendant should receive judgment in said Civil Action, the plaintiff would lose the subject Letters Patent, and that in the event the plaintiff should receive judgment in the said Civil Action, said defendant would then appeal the decision to the highest court necessary, thereby devolving a great and insufferable expense upon the plaintiff.

On March 31, 1942, the plaintiff, due to his inability to have financed said purportedly prohibitive costs, the physical illness of his then Counsel, fear motivated by the intervention of the Department of Justice, and as a result of coercion and economic duress, all of which resulted from actions of the defendant United States of America, assigned, transferred and conveyed to the said defendant all his right, title and interest in and to said Letters Patent, throughout the United States, its territories and possessions, but not elsewhere; all without any consideration for said assignment.

On April 15, 1942, the defendant dismissed said Civil Action No. 8417 against the plaintiff.

Whereupon, the plaintiff seeks relief by a declaratory judgment, declaring said assignment of letters patent to be null, void and of no effect, and ordering
9 and requiring the United States of America to effect an assignment and transfer of the title to said letters patent to the plaintiff, and for such other and further relief to which the plaintiff may be entitled.

To the original complaint a motion to dismiss was filed, and thereupon an amended complaint was filed, which alleges in substance the same as the original complaint, but seeks only a declaratory judgment and such other and further relief as to the Court may seem just and proper. The motion to dismiss the original complaint stands as to the amended complaint. A hearing was had upon briefs and oral argument.

This Court is without jurisdiction to grant specific relief against the United States, its jurisdiction being limited to judgment for damages arising out of a contract, where such damages will not exceed the sum of \$10,000. Such actions may be grounded upon equitable as well as legal rights with respect to the contractual claims, but no grant of authority or consent to be sued empowers this

Court to compel action by the United States other than the payment of damages. Furthermore, it does not appear from the complaint that any duress has been alleged other than the alleged statement by the United States to take action which it legally had a right to take, and to prosecute appeals incident thereto. This is not the kind of duress that would be the basis for the rescission of the assignment which is sought. Furthermore, so far as the allegations of either the original or amended complaint show, no alleged cause of action arose within the period of six years preceding the institution of the instant suit, which showing must be made to justify the institution of a suit against the United States.

For the reasons stated, the motion to dismiss will be granted. Counsel will prepare and submit an appropriate order carrying this decision into effect.

/s/ Jas. W. Morris
Judge.

April 30, 1952.

* * * *

10 Filed May 12 1952 Harry M. Hull, Clerk

Order

This case having come on to be heard upon defendants' motion to dismiss and it appearing to the Court that it is without jurisdiction of the subject matter and it further appearing that neither the original complaint nor the amended complaint states a claim upon which relief may be granted, it is by the Court this 12th day of May, 1952,

ORDERED, That the complaint be and the same is hereby dismissed.

/s/ Jas. W. Morris
Judge

* * * *

11 Filed Jul 11 1952 Harry M. Hull, Clerk

Notice of Appeal

Notice is hereby given this 11th day of June, 1952, that the plaintiff, William C. Clay hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 12th day of May, 1952 in favor of United States of America, et. al. against said William C. Clay.

/s/ Byron N. Scott
Attorney for Plaintiff
777 - 14th St. N. W.
Washington 5, D. C.

• • • •

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,542

WILLIAM C. CLAY, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

LEO A. ROVER,
United States Attorney.
WILLIAM J. PECK,
E. RILEY CASEY,
Assistant United States Attorneys.

*ed States Court of App
For the
District of Columbia Circuit*

FILED

AUG 19 1953

Joseph W. Stewart
CLERK

No. 11,542

STATEMENT OF QUESTIONS PRESENTED

Where a complaint on its face seeks a declaratory judgment that an assignment of letters patent made some eight years prior be declared null and void, pursuant to 28 U.S.C.A. Sec. 1346(a)(2), the following questions in the opinion of the appellee are presented:

1. Did the District Court properly dismiss this complaint for want of jurisdiction?
2. Was this complaint on its face barred by the Statute of Limitations?

INDEX

	Page
Counterstatement of the case.....	1
Statutes Involved	3
Summary of Argument	4
Argument:	
I. The District Court is Without Jurisdiction to Grant Equitable Relief Under the Tucker Act in the Absence of a Monied Demand	4
II. An Action to Set Aside the Assignment of Letters Patent, Commenced More Than Six Years After Said Assignment Occurred, Is Barred by the Statute of Limitations, 28 U.S.C. § 2401(a)	12
Conclusion	15

TABLE OF CASES

<i>Admiral Oriental Line, et al. v. United States</i> , 86 F2d. 201 (2d. Cir. 1936)	5, 11
<i>Bates Manufacturing Co. v. United States</i> , 303 U.S. 567, 58 Sup. Ct. 694, 82 L.Ed. 1020 (1938)	6
<i>Board of Trustees of the National Training School for Boys v. O. D. Wilson Company</i> , 77 U.S. App. D.C. 127, 133 F2d. 399 (1943)	13
<i>Bofors v. United States</i> , 90 U.S. App. D.C. 92, 194 F2d. 145 (1951)	5
<i>Cullinane v. District of Columbia</i> , 18 C. Co. 577, 594	8
<i>District Court v. Barnes</i> , 197 U.S. 146 at 151, 25 S.Ct. 401, 49 L.Ed. 699 (1905)	7
<i>Erceg v. United States</i> , 179 F2d. 510, (9th Cir. 1950)	14
<i>Ex Parte Bakelite Corp.</i> , 279 U.S. 438, 452, 49 Sup. Ct. 411, 73 L. Ed. 789 (1929)	6
<i>Larson v. Domestic and Foreign Corp.</i> , 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. 1628 (1949)	9
<i>Lynn v. United States</i> , 110 F2d. 586 (5th Cir. 1940)	5, 11
<i>Munro v. United States</i> , 303 U.S. 36, 58 Sup. Ct. 421, 82 L.Ed. 633 (1938)	6, 14
<i>New York and O.S.S. Co. v. United States</i> , D.C., S.D., N.Y., 202 Fed. 311, 312 (1912)	6
<i>Portland Hotel Corp. v. Fidelity Storage Corp.</i> , 77 U.S. App. D.C. 282, 134 F2d. 57 (1943)	13
<i>South Boston Iron Works v. United States</i> , 34 C.Cl. 174	8
<i>State of Kansas v. United States</i> , 204 U.S. 331, 27 Sup. Ct. 388, 51 L. Ed. 510 (1907)	5
<i>United States v. Alire</i> , 6 Wall. 573, 18 L.Ed. 947	5, 8
<i>United States v. Dismuke</i> , 76 F2d. 715 (5th Cir. 1935) affirmed 297 U.S. 167, 56 S.Ct. 400, 80 L.Ed. 561 (1936)	5, 6, 11
<i>United States v. Jones</i> , 131 U.S. 1, 9 S.Ct. 669, 33 L. Ed. 90 (1889)	5, 8, 11

IV

Cases—Continued

	Page
<i>United States v. Michel</i> , 282 U.S. 656, 51 Sup. Ct. 284, 75 L.Ed. 598 (1931)	6
<i>United States v. Milliken Imprinting Co.</i> , 202 U.S. 168, 26 Sup. Ct. 572, 50 L. Ed. 980	12
<i>United States v. Pfitsch</i> , 256 U.S. 547, 41 Sup. Ct. 569, 65 L. Ed. 1084 (1921)	6
<i>United States v. Seminole Nation</i> , 299 U.S. 417, 57 S.Ct. 283, 81 L.Ed. 316 (1937)	14
<i>United States v. Shaw</i> , 309 U.S. 495, 60 Sup. Ct. 659, 84 L. Ed. 888 (1940)	5
<i>United States v. Sherwood</i> , 312 U.S. 584, 591, 61 Sup. Ct. 767, 85 L. Ed. 1058 (1941)	6
<i>United States v. Turner</i> , 47 F2d. 86 (8th Cir. 1931)	5, 10, 11
<i>Williams v. United States</i> , 289 U.S. 553, 579, 53 Sup. Ct. 751, 77 L.Ed. 1372 (1933)	6

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,542

WILLIAM C. CLAY, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This is an action seeking a judgment declaring null and void an assignment by the appellant of letters patent to the United States.

The original complaint was filed in the District Court on December 17, 1951 (J.A. 2A), some eight years after the assignment which appellant now seeks to be declared void was executed. Jurisdiction was predicated on the Tucker Act, 28 U.S.C. Sec. 1346(a) (2).

The complaint alleged that on July 2, 1928, the appellant was employed by the United States Government National Advisory Committee for Aeronautics at Langley Field, Hampton, Virginia, as a Junior Aeronautical Engineer. On September 6, 1938, while still so employed, the appellant was granted letters patent for a De-Icing Attachment for airplane propellers. On September 19, 1940, the United States instituted in the United States District Court

for the District of Columbia, Civil Action No. 8417 against the appellant to establish title to said letters patent in the United States of America and to require the appellant to transfer to the United States the whole right, title and interest of the appellant in and to said letters patent. On March 31, 1942, during the pendency of this suit, the appellant assigned to the United States all his right, title and interest in and to the said letters patent. The complaint herein alleged that this assignment was under duress. The alleged duress, consisting of a statement by the United States that if the United States should prevail in that civil action the appellant would lose the subject letters patent, and that in the event the appellant should prevail in that suit, the United States would appeal the decision to the highest court, thereby producing great expense to the appellant. Following the assignment of the letters patent, the United States dismissed the suit against the appellant.

Because of the alleged duress above recited, the appellant sought in this action a declaratory judgment that the above related assignment was null and void, and an order requiring the United States to effect a re-assignment of the letters patent to the appellant.

The Government filed a motion to dismiss herein on the ground that the Court was without jurisdiction and the complaint failed to state a claim upon which relief could be granted (J.A. 4A). Thereafter, on February 4, 1952, appellant filed an amended complaint identical with the original complaint, except that the prayer for an order requiring the United States to effect a re-assignment of the letters patent was omitted. (J.A. 4A.) The Government relied upon its original motion to dismiss as to the amended complaint (J.A. 8A).

Thereupon, at the hearing, the District Court granted the Government's motion to dismiss, stating in a memorandum opinion that it was without jurisdiction under the Tucker Act to entertain actions for specific relief other than the payment of money damages. The Court further held that the complaint failed to state a claim since no duress appeared, that the alleged statement by the United

States that it intended to take action which it was legally entitled to take, was not the kind of duress necessary for the rescission of the assignment which was sought. Further, the Court held that the action was barred by the six years Statute of Limitation, that so far as the original or amended complaint showed, no alleged cause of action was commenced within that period.

For the foregoing reasons, the Court granted the Government's motion to dismiss and an order was entered May 12, 1952, dismissing the complaint for want of jurisdiction and for failure to state a claim upon which relief could be granted (J.A. 9A).

From that order this appeal is taken (J.A. 10A).

After appellant had filed his brief in this Court, the appellee moved to dismiss the appeal or in the alternative to affirm the judgment of the lower court on the ground that appellant by abandoning two of the points relied on by the court below in its decision, had conceded the validity of the judgment below. After argument on this motion, this Court by an order dated March 20, 1953, ordered that action on appellee's motion to dismiss be held in abeyance and permitted the parties to file additional memoranda as to whether this case is barred by the Statute of Limitations. These memoranda having been filed, this Court by an order dated May 5, 1953, denied the Government's motion to dismiss without prejudice to a renewal of such motion at the time of argument of this case on the merits.

In addition to the above, the appellant has filed a supplemental record in this court for the purpose of demonstrating that the trial judge had reserved to the appellant the right to amend his complaint, should the trial court find that it had jurisdiction. The trial court, however, found that it did not have jurisdiction (J.A. 9A).

STATUTES INVOLVED

28 U.S.C. 1346(a) United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded

either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. 2401(a). Time for commencing action against United States.

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

SUMMARY OF ARGUMENT

The jurisdiction of the District Court is concurrent with the Court of Claims under the Tucker Act, 28 U.S.C. § 1346 (a) (2). When jurisdiction is invoked under this Act, the District Court sits as a Court of Claims and its jurisdiction is limited to the terms of the Statute conferring jurisdiction. Neither the Court of Claims nor the District Court has equity jurisdiction under the Tucker Act, beyond that which is required to enable the Court to determine whether a money relief should be granted. In his complaint, appellant sought solely an equitable relief, hence the District Court properly dismissed the complaint for want of jurisdiction.

On its face, the complaint admits that the assignment took place more than six years prior to the filing of the cause of action and is therefore barred by the Statute of Limitations as contained in 28 U.S.C. § 2401(a).

ARGUMENT

I

The District Court is Without Jurisdiction to Grant Equitable Relief Under the Tucker Act in the Absence of a Monied Demand.

The sole question raised by appellant's brief is whether the United States District Court for the District of Colum-

bia has jurisdiction under 28 U.S.C. § 1346(a)(2) to grant specific relief against the United States. It is submitted that under this section the concurrent jurisdiction of the District Courts and the Court of Claims extends only to actions for money judgments, though incidental equitable relief may be had therein, and specifically does not extend to actions in which equitable relief alone is sought, as in the instant case. *United States v. Alire*, 6 Wall. 573, 18 L. Ed. 947; *United States v. Jones*, 131 U.S. 1, 9 S. Ct. 669, 33 L. Ed. 90 (1889); *United States v. Turner*, 47 F. 2d 86 (8th Cir. 1931); *United States v. Dismuke*, 76 F. 2d 715 (5th Cir. 1935), affirmed 297 U.S. 167, 56 S. Ct. 400, 80 L. Ed. 561 (1936); *Admiral Oriental Line, et al. v. United States*, 86 F. 2d 201 (2d Cir. 1936); *Lynn v. United States*, 110 F. 2d 586 (5th Cir. 1940). See also *Bofors v. United States*, 90 U.S. App. D.C. 92, 194 F. 2d 145 (1951).

The Tucker Act, which, with its amendments, presently appears as 28 U.S.C. § 1346(a)(2), confers original jurisdiction on the District Courts "concurrent with the Court of Claims, of: * * * Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in court."

A postulate fundamental in our Government since its inception is that without statutory consent, no suit may be brought against the United States. *United States v. Shaw*, 309 U.S. 495, 60 Sup. Ct. 659, 84 L. Ed. 888 (1940); *State of Kansas v. United States*, 204 U.S. 331, 27 Sup. Ct. 388, 51 L. Ed. 510 (1907). In order to be fair to private parties, however, Congress has, in certain instances, extended statutory relaxation of the rule, the Tucker Act being a familiar example.

Since statutory relaxation of the rule is an exception to a fundamental principle of government, the courts have been careful not to extend jurisdiction in suits against the United States beyond the exact limitations prescribed by Congress.

Munro v. United States, 303 U.S. 36, 58 Sup. Ct. 421, 82 L. Ed. 633 (1938); *United States v. Michel*, 282 U.S. 656, 51 Sup. Ct. 284, 75 L. Ed. 598 (1931). Consequently, if the District Court were to have jurisdiction of appellant's complaint, justification must be found in the provisions of the Tucker Act.

Under that Act, the District Court is not limited to its ordinary jurisdictional boundaries, but has concurrent jurisdiction with the Court of Claims. *United States v. Pfitsch*, 256 U.S. 547, 41 Sup. Ct. 569, 65 L. Ed. 1084 (1921); *Bates Manufacturing Co. v. United States*, 303 U.S. 567, 58 Sup. Ct. 694, 82 L. Ed. 1020 (1938); *United States v. Dismuke*, *Supra*. Actually, under the Act, the District Court sits as a Court of Claims and not as a District Court, and its authority to adjudicate claims against the United States does not extend to any action which could not be maintained in the Court of Claims. *United States v. Sherwood*, 312 U.S. 584, 591, 61 Sup. Ct. 767, 85 L. Ed. 1058 (1941). This is apparent from the purpose of the Act—to give persons having claims against the United States for comparatively small amounts, the right to bring suits in the Districts where they and their witnesses reside, without subjecting them to the expense and annoyance of litigating in a Court in Washington, D. C. *New York and O.S.S. Co. v. United States*, D.C., S.D., N.Y., 202 Fed 311, 312 (1912); *Bates Manufacturing Co. v. United States*, *Supra*.

Thus, whether the District Court has jurisdiction is dependent upon whether the Court of Claims could have assumed jurisdiction. The latter court is legislative, not constitutional in character and function and its jurisdiction arises from the Congressional power "to pay the debts * * * of the United States," which it is free to exercise through judicial agencies. *United States v. Sherwood*, *Supra*.

The principal purpose of the Court of Claims is to examine and determine claims for money against the United States. *Ex Parte Bakelite Corp.*, 279 U.S. 438, 452, 49 Sup. Ct. 411, 73 L. Ed. 789 (1929). *Williams v. United States*, 289 U.S. 553, 579, 53 Sup. Ct. 751, 77 L. Ed. 1372 (1933).

As was aptly stated, by the Supreme Court in *District Court v. Barnes*, 197 U.S. 146 at 151, 25 S. Ct. 401, 49 L. Ed. 699 (1905),¹ an appeal from the Court of Claims on an action brought under the District of Columbia Claims Act of 1880, in discussing the jurisdiction of the Court of Claims:

“It is true that the purpose of the various acts conferring jurisdiction upon the Court of Claims has been held to be to permit the adjudication of money demands against the United States, and it may be that under this act, as under others, there was no intention to confer equity jurisdiction beyond that which is required to enable a court to determine whether money relief should be granted. The intent of the act was to enable parties to submit the justice of their claims against the United States to adjudication in a competent court. For that purpose, the act conferred in terms equitable as well as legal jurisdiction.

“The province of the Court of Claims is to pass upon justice of the claim and adjudge accordingly. And it is obviously intended that, when necessary to adjudicate claims against the District, the Court shall be unhampered in the exercise of jurisdiction, and in many courts of this country having a civil code, there has been conferred upon the same tribunal the power to grant the necessary and legal equitable relief. One who has right to *money relief upon a contract* mistakenly omitted to be reduced to writing, in accordance with the true agreement of the parties, has a claim of equitable cognizance, for the contract must be reformed to meet the intentions of the parties, and when corrected may be adjudged a valid claim.

“For the purpose of adjudging such claims, this statute gives to the court equitable jurisdiction in order that it may determine what the District *ought to pay to the claimant*. *Although unable to grant a decree for specific performance or exercise the peculiar powers of a court of equity, the Court of Claims may determine the money relief to which the claimant is entitled, without arising out of an equitable or legal demand*. This principle was recognized in *United States v. Jones*, 131 U.S. 1, 18. The Court of Claims in other cases has exercised the equitable jurisdiction conferred in the Act

¹ A case cited and relied upon by appellant but not involving the Tucker Act.

of June 16, 1880, *Cullinane v. District of Columbia*, 18 C. Co. 577, 594, and like jurisdiction to reform contracts under the act of March 3, 1887, 24 Stat. 505, (the Tucker Act) *South Boston Iron Works v. United States*, 34 C. Cl. 174." (Emphasis supplied.)

United States v. Alire, supra, is the first important Supreme Court case deciding this question under the Tucker Act. Alire alleged he had made application to the Commissioner of Pensions for certain lands under appropriate acts of Congress and had conformed to the provisions of said acts, and the rules and regulations of the Pension Office. His application was rejected by the Commissioner and, on appeal to the Secretary of the Interior, the rejection was confirmed. Suit was filed in the Court of Claims, and a decree rendered in favor of Alire for a bounty land warrant, to be made and delivered to him by the proper officer. On appeal, the Supreme Court stated: "the only question presented in the record, which we shall examine, is whether or not the Court below had jurisdiction of the cause." The court examined the Act conferring jurisdiction upon the Court of Claims, which Act used substantially the same language as is now embodied in 28 U.S.C. 1346 (a)(2). The Supreme Court stated as follows: "And, although it is true that the subject matter over which jurisdiction is conferred, both in the Act of 1855 and of 1863 would admit to a much more extended cognizance of cases, yet it is quite clear that the limited powers given to render a judgment necessarily retains the general terms and confines the subject matter to cases in which the petitioner sets up a money demand as due from the government."

For this reason, the Supreme Court concluded that the Court of Claims was without jurisdiction to grant the relief requested.

The next leading case to consider this question was *United States v. Jones, Supra*. This was a suit for specific performance seeking to compel the United States to issue and deliver to the plaintiffs respectively patents for timber land alleged to have been taken up and purchased by them under certain Acts of Congress. The question involved

was whether the statute authorized suits not for the recovery of money, but for equitable relief by specific performance, to compel the issue and delivery of a patent. It was argued that the amended law extended the jurisdiction of the Court of Claims and the concurrent jurisdiction of the Circuit and District Courts, so as to embrace every kind of claim, equitable as well as legal and specific relief for recovery of property as well as a recovery of money. The Court, after setting forth the applicable law (which used substantially the same language as 28 U.S.C. 1346 (a) (2) now under consideration), stated:

“It seems, therefore, that in the point of providing only for money decrees and money judgments, the law is unchanged. Merely being so extended as to include claims for money arising out of equitable and maritime as well as legal demands. We do not think that it was the intention of Congress to go further than this; had it been, some provision would have been made for carrying into execution decrees for specific performance, or for delivery of the possession of property to be recovered in kind. The general scope and purport of the Act is against any further extension than that here indicated.”

In a more recent decision, the Supreme Court again considered this question in *Larson v. Domestic and Foreign Corporation*, 337 U.S. 682, 69 S. Ct. 1457, 93 L. Ed. 1628 (1949). In the *Larson* case, plaintiff brought suit in a Federal District Court against an agency of the United States in its official capacity. It was alleged that the administrator had sold surplus coal to the plaintiff, but had refused to deliver it and had made a new contract to sell it to others. The prayer was for an injunction prohibiting the administrator from selling or delivering the coal to anyone other than the plaintiff and for a declaration that the sale to the plaintiff was valid and the sale to the second purchaser invalid. The Supreme Court in its decision stated as follows:

“the question becomes difficult and the area of controversy is entered when the suit is not one for damages, but for specific relief; i.e. the recovery of specific prop-

erty or monies, ejection from land or injunction either directing or restraining the defendant officer's actions. In each such case, the question is directly posed as to whether, by obtaining relief against the officer, relief will not, in effect, be obtained against the sovereign, for the sovereign can act only through agents and, when an agent's actions are restrained, the sovereign itself may, through him, be restrained. As indicated, this question does not arise because of any distinction between law and equity. It arises whenever suit is brought against an officer of the sovereign in which the relief sought from him is not compensation for an alleged wrong, but, rather, the prevention or discontinuance, *in rem*, of the wrong. In each such case, the compulsion which the court is asked to impose, may be compulsion against the sovereign, although nominally directed against the individual officer. If it is, the suit is barred, not because it is a suit against an officer of the government, but because it is, in substance, a suit against the government over which the court, in the absence of consent, has no jurisdiction.

"Relief sought in this case was not a payment of damages by the individual defendant. To the contrary, it was asked that the Court order the War Assets Administrator, his agents, assistants, deputies and employees and all persons acting under their direction, not to sell the coal involved and not to deliver it to anyone other than the respondent. The District Court held that this was relief against the sovereign and therefore dismissed the suit. We agree."

This jurisdictional question under the Tucker Act has arisen in several of the Circuit Courts and it has been uniformly held that in the absence of a monied demand, a District Court is without jurisdiction to render specific performance.

In *United States v. Turner*, 47 F. 2d 86 (8th Cir. 1931), the appellee Turner filed a bill against the United States, praying that her title to a tract of land be quieted as against any claims of the United States, and for an injunction against any disturbance of her title and possession for general relief. The District Court granted the relief sought and upon appeal by the government to the Circuit Court of Appeals it was held that the District Court was without jur-

isdiction under the Tucker Act. The Court in the *Turner* case cited at length from *United States v. Jones, supra*, for the proposition that the Court of Claims as well as the District Court was limited in its jurisdiction under the Tucker Act to relief for monied demands.

And again in *Admiral Oriental Line v. United States*, 86 F. 2d 201 (2d Cir. 1936), in an opinion by Justice Learned Hand the court held that a District Court did have jurisdiction under the Tucker Act to grant certain equitable relief provided that there was initially a claim for money embodied in the complaint. The court said, at page 204, "the only possible objection remaining is that a cause of suit in equity may not be prosecuted under the Tucker Act. It is true that a bill for specific performance will not lie, *United States v. Jones*, 131 U.S. 1, 9 Sup. Ct. 669, 33 L. Ed. 90; nor will one to quiet title, *United States v. Turner*, 47 F. 2d 86 (C.C.A. 8); but if the bill sound in contract, and call only for the payment of money, the relief may be granted though only a court of equity would give it."

The Fifth Judicial Circuit Court, in determining the question of jurisdiction under the Tucker Act in a case in which the plaintiff sought to recover amounts claimed to be due for accrued monthly installments on a civil service annuity and for a declaratory judgment as to future installments, held: "We think it clear that the jurisdictional points are well taken. The District Court of the United States as to claims under the Tucker Act, sits as a special tribunal, exercising jurisdiction concurrent with the Court of Claims. * * * When so sitting, it sits only to hear claims for actual damages on monied demands." The complaint was thereupon dismissed. See also *United States v. Dismuke, supra*.

That equitable relief alone, or the reformation of a contract or deed, aside from a money claim, can not be had under the Tucker Act was clearly established in *Lynn v. United States*, 110 F2d. 586 (5th Cir. 1940). In that case the appellant sought a declaratory judgment against the United States and the Tennessee Valley Authority as to her rights under a deed she had previously made to the

United States, and if necessary, requested that the deed be reformed. In discussing the question of joinder of the Tennessee Valley Authority with the United States, the Court stated:

“Appellant contends that Rule of Civil Procedure 20, 28 U.S.C.A. following Section 723c, authorizes the joinder of a claim against Tennessee Valley Authority with one against the United States under the Tucker Act. We think, otherwise. The authority to make rules of procedure and to supersede inconsistent statutes given the Supreme Court by the Act of June 19, 1934, 28 U.S.C.A. Sections 723b, 723c, related only to actions at law and suits in equity. A proceeding under the Tucker Act is neither. In it, only claims for money can be adjudicated. Reformation can be had of the contract on which the money claim arises, but not equitable relief as to land. Appellant’s prayers for reformation of the deed and a declaratory judgment would have to be ignored. *United States v. Jones*, 131 U.S. 1, 9 Sup. Ct. 669, 33 L. Ed. 90; *United States v. Milliken, Imprinting Co.* 202 U.S. 168, 26 Sup. Ct. 572, 50 L. Ed. 980. * * *”

Here the court was willing to give equitable relief only on the contract in which money demand was made and not for separate equitable relief, even though there was a monied claim in the petition as a whole.

II

An Action to Set Aside the Assignment of Letters Patent, Commenced More Than Six Years After Said Assignment Occurred, Is Barred by the Statute of Limitations, 28 U.S.C. § 2401(a).

The lower court dismissed the complaint on three grounds: (1) that there was no jurisdiction under the Tucker Act to maintain a suit for solely equitable relief uncoupled with any demand for a money judgment; (2) that there was no allegation of legal duress; and (3) that it did not appear from the complaint that any alleged cause of action arose within six years as prescribed by 28 U.S.C. 2401(a).

The appellant purports to appeal only from the judg-

ment entered by the lower court as to the first ground of dismissal of the complaint, contending that he has effectively reserved his right to amend as to the second and third grounds if the jurisdictional question is ultimately resolved in his favor.

On March 20, 1953, this Court ordered the parties to the instant litigation to file memoranda directed to the question as to whether or not the Statute of Limitations constituted a bar to judicial consideration of the relief sought in the complaint. In response thereto, the appellant contended: (1) The Statute of Limitations does not begin to run until the duress or undue influence ceases; and (2) if permitted to amend his complaint, appellant "would allege that the duress continued unabated until it ceased on October 19, 1946, the day that plaintiff's service in the United States Navy ended."

The Government has no quarrel with the general proposition that the Statute of Limitations does not commence to run until the alleged duress ceases. But reliance on that proposition in the instant case does not aid the appellant, for he has neither shown the existence of legal duress at any time stated in the complaint, nor has he shown an ability to so amend his complaint as to state a cause of action within the time allotted by the Statute of Limitations.

No legal duress shown.—In order to escape the bar of the Statute of Limitations, appellant must allege facts sufficient to constitute legal duress. This the District Court held he did not do, and he concedes as much by his statement of intention to amend. The only duress which appellant has alleged is the threat by the United States to pursue its legal remedies to the highest court with consequent expense to the appellant. But a threat to do that which one has a legal right to do is not duress. This is particularly true of threatened legal action. *Board of Trustees of the National Training School for Boys v. O. D. Wilson Company*, 77 U.S. App. D.C. 127, 133 F.2d 399 (1943); *Portland Hotel Corp. v. Fidelity Storage Corp.*, 77 U.S. App. D.C. 282, 134 F.2d 57 (1943).

Since the alleged duress here consisted of the United

States doing that which it had a lawful right to do, it is manifest, as the lower court held, and appellant concedes, that a cause of action has not been stated. The alleged duress being insufficient to state a cause of action, *a fortiori*, it was insufficient to toll the Statute of Limitations. Appellant's cause of action, if any, accrued at the time of the assignment in 1942, and having failed to take any action within the six year period provided by 28 U.S.C. 2401, the District Court was without jurisdiction to entertain said cause. *United States v. Seminole Nation*, 299 U.S. 417, 57 S. Ct. 283, 81 L. Ed. 316 (1937); *Munro v. United States*, 303 U. S. 36, 58 S. Ct. 421, 82 L. Ed. 633 (1938).

No showing that complaint can be amended to establish legal duress within time allowed by 28 U.S.C. § 2401.—Appellant now states that if he succeeds on this appeal, he will amend his complaint so as to allege sufficient legal duress. Of what this duress consists, we are not advised. Certainly the bare conclusion that "the duress continued unabated, until it ceased on October 19, 1946, the day that plaintiff's service in the United States Navy ended," does not in legal contemplation, constitute a showing of duress, particularly when it is realized that the subject matter of this suit relates to his employment by the National Advisory Committee for Aeronautics, an organization not a part of the United States Navy. It would seem only reasonable to assume that if appellant had knowledge of facts constituting legal duress, he would so advise this Court as an aid in determining whether there was, as a matter of law, duress sufficient to toll the Statute of Limitations. This he has not done. His failure in this respect compels the inference that no such duress in fact exists. It would seem to follow, therefore, that the Statute of Limitations did not toll and that his suit, filed some eight years after the assignment, is, consequently, barred by the provisions of 28 U.S.C. § 2401. The terms of the latter statute are jurisdictional and govern claims filed under the Tucker Act. *Erceg v. United States*, 179 F2d. 510 (9th Cir. 1950).

CONCLUSION

For the reasons stated above, we respectfully submit that the instant appeal should be dismissed, or, in the alternative, that the judgment of the District Court should be affirmed.

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